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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

In re GERON CORPORATION SECURITIES
LITIGATION

This Document Relates To:

ALL ACTIONS

Case No. 3:14-CV-01224-CRB

**LEAD PLAINTIFF'S NOTICE OF
MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF THE
CLASS ACTION SETTLEMENT, AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Judge: Hon. Charles R. Breyer

Hearing Date: April 7, 2017

Time: 10:00 A.M.

Courtroom: 6, 17th Floor

CONSOLIDATED CLASS ACTION

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on April 7, 2017, at 10:00 a.m., in Courtroom 6 on the 17th Floor before the Honorable Charles R. Breyer at the United States District Court for the Northern District of California, San Francisco Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, Lead Plaintiff Vinod Patel (“Lead Plaintiff”) hereby moves for an order (i) preliminarily approving the proposed settlement of this action; (ii) preliminarily certifying the proposed class for purposes of settlement; (iii) approving the form and manner of giving notice of the proposed settlement to the class; and (iv) scheduling a final approval hearing before the Court. The grounds for this motion are that the proposed settlement is within the range of what could be found to be fair, reasonable, and adequate so that notice of its terms may be disseminated to members of the class and a hearing for final approval of the proposed settlement may be scheduled.

This motion is based upon the Notice of Motion and Motion, the Memorandum of Points and Authorities set forth below, the Stipulation and Agreement of Settlement dated March 2, 2017, filed simultaneously herewith (the “Stipulation”), the pleadings and records on file in this action, and other such matters and argument as the Court may consider at the hearing of this motion.

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STATEMENT OF ISSUES TO BE DECIDED

1. Should the proposed settlement be preliminarily approved?
2. Should the proposed form and manner of notice to the Class be approved?
3. Should the proposed class be preliminarily certified for settlement purposes?

SUMMARY OF THE ARGUMENT

After nearly three years of intensive litigation, Lead Plaintiff seeks preliminary approval of a proposed settlement of this putative class action (the “Action”) for \$6,250,000 (the “Settlement”). The Settlement represents a certain and substantial recovery for the members of the proposed Settlement Class (the “Class Members”) and clearly “falls within the range of possible approval.” *In re Celera Corp. Secs. Litig.*, 2015 U.S. Dist. LEXIS 42228, at *9 (N.D. Cal. Mar. 31, 2015). Furthermore, the Settlement “(1) . . . appears to be the product of serious, informed, noncollusive negotiations, (2) has no obvious deficiencies, [and] (3) does not improperly grant preferential treatment to class representatives or segments of the class[.]” *In re Zynga Sec. Litig.*, 2015 U.S. Dist. LEXIS 145728, at *32 (N.D. Cal. Oct. 27, 2015). The terms of the Settlement were reached with the assistance of experienced mediator Hon. Layn Phillips at an in-person mediation session and through the course of numerous conference calls involving the Settling Parties and the mediator. *See Swain v. Ryder Integrated Logistics, Inc.*, 2012 U.S. Dist. LEXIS 93215, at *2 (N.D. Cal. 2012) (Breyer, J.) (“The assistance of an experienced mediator in the settlement process supports the Court’s conclusion that the settlement is non-collusive.”). The Settlement releases only those claims based upon the same factual predicate as the allegations in this Action; the *cy pres* beneficiary has a reasonable nexus to the claims in this Action; and counsel is requesting no more than the Ninth Circuit benchmark in attorneys’ fees. *See McCabe v. Six Continents Hotels, Inc.*, 2015 U.S. Dist. LEXIS 85084, at *21-24 (N.D. Cal. June 30, 2015). The Net Settlement Fund will be distributed pursuant to a Plan of Allocation developed in consultation with an expert, and Plaintiffs will receive their *pro rata* share of the fund. *See Altamirano v. Shaw Indus.*, 2015 U.S. Dist. LEXIS 97098, at *22 (N.D. Cal. July 24, 2015). The Settlement Amount is also within the range of possible approval in light of the substantial risks and expenses of future litigation which

1 could result in little recovery or no recovery at all. *See Ruch v. Am Retail Grp., Inc.*, 2016 U.S.
 2 Dist. LEXIS 39629, at *37 (N.D. Cal. Mar. 24, 2016).

3 Lead Plaintiff also requests that the settlement Class be preliminarily certified for settlement
 4 purposes. “As in almost all lawsuits by shareholders of public companies, the investors in this case
 5 easily satisfy the requirements of Rule 23.” *In re Magma Design Automation Sec. Litig.*, 2007 U.S.
 6 Dist. LEXIS 62641, at *2 (N.D. Cal. Aug. 16, 2007) (Breyer, J.). As set forth herein, the Action
 7 readily satisfies Rule 23(a) because (a) the Class has over 100 members; thus, joining all Class
 8 Members would be impracticable; (b) Class Members share common questions of law and fact,
 9 including the alleged falsity of Defendants’ (defined below) statements and omissions during the
 10 Class Period, as well as their scienter; (c) Lead Plaintiff’s claims are typical of the Class’s claims
 11 because he allegedly suffered damages as a result of his purchases of Geron Corporation (“Geron”
 12 or the “Company”) common stock; and (d) Lead Plaintiff has demonstrated his adequacy by
 13 litigating this Action for nearly three years and obtaining this favorable result. *See Staton v. Boeing*
 14 *Co.*, 327 F.3d 938, 953 (9th Cir. 2003). This Action also satisfies the requirements of Rule 23(b)(3)
 15 because the same set of operative facts applies to each Class Member (*i.e.* each Class Member
 16 purchased Geron common stock at prices alleged to be artificially inflated as a result of Defendants’
 17 false and misleading statements and/or omissions and was allegedly harmed when the undisclosed
 18 facts came to light) and the Class Members are too numerous to bring individual actions. *See*
 19 *Nielson v. Sports Auth.*, 2013 U.S. Dist. LEXIS 106018, at *19 (N.D. Cal. July 26, 2013). In
 20 addition to certifying the Class for settlement purposes, Lead Plaintiff also respectfully requests that
 21 the Court appoint Faruqi & Faruqi, LLP (“Lead Counsel” or the “Faruqi Firm”) as Class Counsel
 22 for the Action. *See* Fed. R. Civ. P. 23(g).

23 Lead Plaintiff requests that the Court approve the form and manner of notice to be provided
 24 to proposed Class Members. The Settlement Notice and Publication Notice include all of the
 25 information that is required by due process, Rule 23(c)(2)(B), Rule 23(e), and the Private Securities
 26 Litigation Reform Act of 1995, (the “PSLRA”), 15 U.S.C. § 78u-4, and are to be made available to
 27 Class Members through the standard methods of mailing, publication, and a designated website.
 28 *See, e.g., In re Portal Software, Inc. Sec. Litig.*, 2007 U.S. Dist. LEXIS 51794, at *18-19 (N.D. Cal.

1 June 30, 2007) (dissemination of notice to all reasonably identifiable class members and published
2 summary notice approved as best practical).

MEMORANDUM OF POINTS AND AUTHORITIES

Lead Plaintiff, on behalf of himself and the putative Class, and defendants Geron, John A. Scarlett, Stephen M. Kelsey, and Olivia K. Bloom (collectively, “Defendants”)¹ have reached a proposed settlement of this Action for \$6,250,000 that, if approved, will resolve all claims in the Action. Lead Plaintiff respectfully submits this memorandum of law in support of his motion and requests that the Court enter the proposed Order Preliminarily Approving Settlement and Providing for Notice (“Preliminary Approval Order”).² The Preliminary Approval Order will, among other things, (1) preliminarily approve the Settlement on the terms set forth in the Stipulation; (2) certify the Class for settlement purposes; (3) appoint Lead Plaintiff as Class Representative and the Faruqi Firm as Class Counsel; (4) approve the form and manner of giving notice of the Settlement to the Class; and (5) set a date for the Final Fairness Hearing.

FACTUAL AND PROCEDURAL BACKGROUND

A. Description of the Action

Rohan Kishtagari filed the initial complaint on March 14, 2014 in the Northern District of California, captioned *Kishtagari v. Geron Corporation, et al.*, CV 14-1224 (N.D. Cal. Mar. 14, 2014). On March 28, 2014, James Beckman filed a second action, captioned *Beckman v. Geron Corporation, et al.*, CV 14-1424 (N.D. Cal. Mar. 28, 2014). The *Kishtagari* and *Beckman* Actions named Geron, Scarlett, and Bloom as defendants.

On May 13, 2014, several movants filed motions to consolidate the *Kishtagari* and *Beckman* Actions and to be appointed Lead Plaintiff in the Actions in accordance with the PSLRA. ECF Nos. 17-27. Vinod Patel was the movant with the largest financial interest. Accordingly, on June 30, 2014, the Court consolidated the actions into one action captioned *In re Geron Corporation Securities Litigation*, CV 14-1224 (N.D. Cal. Mar. 14, 2014) (the “Action”), appointed Patel as Lead Plaintiff, and approved his selection of the Faruqi Firm as Lead Counsel. ECF No. 42.

¹ Lead Plaintiff and Defendants are defined herein as the “Settling Parties.”

² All capitalized terms that are not otherwise defined herein shall have the same meaning as those provided in the Stipulation and Agreement of Settlement dated as of March 2, 2017 (the “Stipulation”), filed concurrently herewith. All references to the “Gonnello Decl.” are to the Declaration of Richard W. Gonnello in Support of Lead Plaintiff’s Motion for Preliminary Approval of the Class Action Settlement filed in support hereof. All quotations and citations are omitted unless otherwise noted.

1 Subsequently, Lead Plaintiff filed the Consolidated Amended Class Action Complaint (the
 2 “CAC”) on September 19, 2014 adding Kelsey as a defendant. ECF No. 45. The CAC alleges that
 3 during the Class Period, Defendants made a series of false and misleading statements regarding the
 4 safety data from the Company’s Phase 2 trial for its drug imetelstat in patients with essential
 5 thrombocythemia and polycythemia vera (the “ET Trial”). First, in December 2012, Defendants
 6 began to present the preliminary results for the first 14 out of 18 total patients enrolled in the ET
 7 Trial stating that “[l]ong-term administration of imetelstat was generally well tolerated[,]” but
 8 disclosed that the liver function tests (“LFTs”) from 92.9% of patients showed elevations in the
 9 liver enzymes alanine aminotransferase (“ALT”) or aspartate aminotransferase (“AST”) in “All
 10 Grades” and 14.3% of patients experienced Grade 3 elevations in AST or ALT. CAC at ¶56. Three
 11 months later, on March 13, 2013, Geron begrudgingly disclosed more robust safety data from the
 12 ET Trial showing more serious LFT abnormalities and admitting that “because when we presented
 13 the data in December at ASH, we basically had to get the pertinent data into 12 slides, . . . *I don’t*
 14 *think that the two slides that we presented on safety did full justice to the clinical picture.*” CAC
 15 ¶83. On this news, Geron’s stock dropped \$0.12 on March 13, 2013, on unusually heavy volume.
 16 CAC ¶158.

17 Throughout the remainder of the Class Period, Defendants stated that the Company was
 18 “continuing to treat and follow patients previously enrolled in the” ET Trial (CAC ¶¶90, 95, 97, 99,
 19 101); imetelstat has been “well tolerated” in all patients who had been treated in the ET Trial (CAC
 20 ¶¶78, 80, 83, 85, 92, 94, 101, 104, 128); and that “LFT abnormalities do not appear to progressively
 21 worsen over time” (CAC ¶¶94, 101, 128). Defendants failed to disclose that when these statements
 22 were made, they were not in fact following many of the patients who had been enrolled in the ET
 23 Trial, and thus were unaware whether the drug was being well tolerated, whether the LFT
 24 abnormalities worsened over time, or whether the LFT abnormalities were reversible. On March
 25 12, 2014, Geron announced that the U.S. Food and Drug Administration (the “FDA”) placed a
 26 clinical hold on the investigational new drug application for imetelstat “due to the occurrence of
 27 persistent low-grade liver function test (LFT) abnormalities observed in the Phase 2 study of
 28 imetelstat in ET patients and the potential risk of chronic liver injury following long-term exposure

1 to imetelstat.” ¶131. On this news, the price of Geron common stock dropped \$2.56 per share, or
2 61% in one trading day.

3 On November 18, 2014, Defendants moved to dismiss the CAC for failure to state a claim
4 by filing the Motion to Dismiss the Consolidated Amended Class Action Complaint (the “Motion to
5 Dismiss”). ECF No. 54-56. On April 10, 2015 the Court denied in part and granted in part the
6 Motion to Dismiss. ECF No. 73. Specifically, as explained in the Order filed on April 15, 2015
7 (the “MTD Order”), the Court upheld the Section 10(b) and Rule 10b-5 claims against Geron,
8 Scarlett, Bloom, and Kelsey and the Section 20(a) control person claims against Scarlett, Bloom,
9 and Kelsey for fifteen different false and misleading statements made throughout the Class Period.
10 ECF No. 75.

11 On May 20, 2015, Defendants filed the Motion for Leave to File a Motion for
12 Reconsideration of the April 15, 2015 Order Granting in Part and Denying in Part Defendants’
13 Motion to Dismiss the Consolidated Amended Class Action Complaint (the “Motion for Leave”).
14 ECF No. 80. On May 22, 2015, Defendants filed the Answer to Plaintiff’s Consolidated Amended
15 Class Action Complaint. ECF No. 81. The Court subsequently denied the Motion for Leave on
16 September 3, 2015. ECF No. 90.

17 Several months later, the Settling Parties engaged Judge Layn Phillips (Ret.) a well-
18 respected and highly experienced mediator, to assist them in exploring a potential resolution of the
19 Action. On November 2, 2015, the Settling Parties met with Judge Phillips for an arm’s-length
20 mediation session. During the session, the parties extensively debated the strengths and weaknesses
21 of Lead Plaintiff’s claims and the defenses available to Defendants; however, the Settling Parties
22 were not able to reach an agreement during the session. To facilitate settlement, after the mediation
23 session, Defendants agreed to produce certain categories of documents to Lead Plaintiff in order to
24 shed light on their defenses. Lead Counsel reviewed several thousand pages of documents, and
25 then engaged in additional discussions with Defendants’ Counsel to debate the merits of the claims.

26 The Settling Parties were not able to come to an agreement at that time, so on December 11,
27 2015, they exchanged Rule 26(a)(1) Initial Disclosures. Then, on July 8, 2016, Lead Plaintiff
28 propounded document requests on Defendants and began the processes of serving third-party

1 subpoenas on the FDA and Geron's liver panel experts. In response, on August 4, 2016,
2 Defendants propounded document requests and interrogatories on Lead Plaintiff and noticed his
3 deposition. The following week Lead Plaintiff filed his Motion for Class Certification (ECF Nos.
4 108, 109). Shortly thereafter, the Settling Parties sought leave to stay the class certification briefing
5 schedule in order to engage in an additional mediation session with Judge Phillips. ECF No. 110.
6 The Settling Parties met for an in-person mediation discussion on September 1, 2016 without Judge
7 Phillips and continued to mediate telephonically with the assistance of Judge Phillips. After
8 substantial discussions that had spanned the course of a year, on November 11, 2016, the Settling
9 Parties were able to reach an agreement in principle to settle the claims against Defendants and then
10 worked over the course of several months to finalize the terms of the Stipulation.

11 **B. The Proposed Settlement**

12 The Settlement provides that the Defendants will cause to be paid the amount of \$6,250,000,
13 in cash, to settle all claims in the Action. The Settlement Amount will be placed into an interest-
14 bearing escrow account and, after paying attorneys' fees and expenses approved by the Court, and
15 other costs of settlement, the Net Settlement Fund will be distributed to Authorized Claimants. In
16 exchange for the payment of the Settlement Amount, Lead Plaintiff and the settlement Class will
17 release all Settled Claims against the Defendant Releasees.

18 Lead Plaintiff entered into this Settlement with a full and comprehensive understanding of
19 the strengths and weaknesses of the claims in the CAC, which are based on Lead Counsel's
20 extensive experience with securities litigation, the investigation performed in connection with the
21 filing of the amended complaints, the legal research conducted in connection with the motion to
22 dismiss and the motion for class certification, the numerous discovery documents reviewed by Lead
23 Counsel, and consultation with medical and damages experts. Lead Plaintiff believes that the
24 claims asserted in this Action have merit and that the evidence developed to date supports the
25 claims. Lead Plaintiff and Lead Counsel recognize, however, the expense and length of continued
26 proceedings necessary to prosecute the Action through trial and possible appeals, as well as the
27 uncertain outcome of any litigation, especially in complex actions such as this. Lead Plaintiff and
28 Lead Counsel also are mindful of the inherent problems of proof under and possible defenses to the

securities law violations asserted in the Action. In light of these obstacles, Lead Plaintiff and Lead Counsel believe the Settlement set forth in the Stipulation confers substantial benefits upon, and thus is in the best interest of, the Class.

ARGUMENT

I. The Settlement Warrants Preliminary Approval

Fed. R. Civ. P. 23(e) provides that any compromise of a class action must receive court approval. The Ninth Circuit has a “strong judicial policy that favors settlements, particularly where complex class action litigation is concerned.” *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, at *9 (C.D. Cal. June 10, 2005). “[T]here is an overriding public interest in settling and quieting litigation. This is particularly true in class action suits. . . .” *Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1229 (9th Cir. Cal. 1989).

The settlement approval process entails two steps: “(1) preliminary approval of the settlement; and (2) final approval of the settlement at a fairness hearing following notice to the class.” *Celera*, 2015 U.S. Dist. LEXIS 42228, at *9. “Preliminary approval is appropriate where the proposed settlement is neither illegal nor collusive and is within the range of possible approval.” *Id.* Thus, at this juncture, the court should preliminarily approve a settlement and notice to the class if “[1] the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, [2] has no obvious deficiencies, [3] does not improperly grant preferential treatment to class representatives or segments of the class, [4] and falls within the range of possible approval.” *Zynga*, 2015 U.S. Dist. LEXIS 145728, at *32.

A. The Proposed Settlement Is the Product of Arm’s-Length Negotiations

The first factor considers the method by which the parties arrived at the settlement. “An initial presumption of fairness is usually involved if the settlement is recommended by class counsel after arm’s-length bargaining.” *Harris v. Vector Mktg. Corp.*, 2011 U.S. Dist. LEXIS 48878, at *24 (N.D. Cal. Apr. 29, 2011). Here, the parties agreed on the Settlement Amount after, *inter alia*, (1) Lead Counsel conducted a lengthy investigation into the facts alleged in the Action; (2) Lead Counsel drafted an amended complaint; (3) the Settling Parties engaged in motion to dismiss briefing; (4) Defendants filed the Answer to the CAC and a Motion for Leave; (5) the Settling

Parties exchanged discovery requests and Lead Plaintiff served third-party subpoenas; (6) Lead Counsel reviewed thousands of pages of documents from Defendants and third-parties; (7) Lead Counsel filed a motion for class certification; and (8) Lead Counsel consulted with medical and economic experts. Thus, the Settling Parties engaged in negotiations with a comprehensive understanding of the strengths and weaknesses of their positions and the procedural hurdles facing this Action. *See Zynga*, 2015 U.S. Dist. LEXIS 145728, at *33 (“For the parties to have brokered a fair settlement, they must have been armed with sufficient information about the case to have been able to reasonably assess its strengths and value.”).

The negotiations first took place in a formal, in-person session with the assistance of a well-respected mediator with significant experience mediating securities fraud class actions. *Swain*, 2012 U.S. Dist. LEXIS 93215, at *2 (“The assistance of an experienced mediator in the settlement process supports the Court’s conclusion that the settlement is non-collusive.”). The parties vigorously debated their positions but they were unable to come to an agreement at that time. Over the course of the following year, the parties entered into the discovery phase of litigation whereby Lead Counsel reviewed thousands of pages of discovery documents and continued to consult with medical and economic experts. During this time, the parties continued to engage in settlement discussions with the help of Judge Phillips and were eventually able to reach a resolution. Furthermore, counsel is experienced in this type of litigation. Lead Counsel is a nationally-recognized law firm with substantial experience prosecuting securities class actions. *See Gonnello Decl., Ex. 2*. Additionally, Defendants’ Counsel, Cooley LLP, is renowned for its securities litigation practice. This Court has found that this factor weighs heavily in support of approval, explaining that “[w]hen class counsel is experienced and supports the settlement, and the agreement was reached after arm’s length negotiations, courts should give a presumption of fairness to the settlement.” *Ramirez v. Ghilotti Bros.*, 2014 U.S. Dist. LEXIS 56038, at *3 (N.D. Cal. Apr. 21, 2014) (Breyer, J.). Having settled numerous securities class actions, Lead Counsel believes that the terms of the Settlement are fair, adequate, and reasonable.

B. The Proposed Settlement Has No Obvious Deficiencies

The Court must next consider whether the proposed Settlement has any obvious

1 deficiencies. Courts often look at the class definition, the scope of the release, the *cy pres*
 2 beneficiaries, and whether the requested attorneys' fees are reasonable. *See McCabe v. Six*
 3 *Continents Hotels, Inc.*, 2015 U.S. Dist. LEXIS 85084, at *21-24 (N.D. Cal. June 30, 2015).

4 Here the Class includes all investors who purchased common stock during the time in which
 5 Defendants were purportedly committing securities fraud and who allege to have been damaged as
 6 a result. The Settling Parties were careful to exclude all parties related to Defendants and any
 7 Person who may have benefitted from Defendants' actions. Next, the "Settlement Agreement's
 8 release language appropriately releases only claims based on the same factual predicate as the
 9 underlying claims in this case" and only claims based upon the purchase or acquisition of Geron
 10 common stock during the Class Period. *Ruch*, 2016 U.S. Dist. LEXIS 39629, at *33. "Such a
 11 narrow release warrants preliminary approval." *Id.*; *see also Angell v. City of Oakland*, 2015 U.S.
 12 Dist. LEXIS 1037, at *23 (N.D. Cal. Jan. 5, 2015).

13 Lastly, Lead Counsel is requesting attorneys' fees not to exceed 25% of the Net Settlement
 14 Fund and up to \$200,000 in litigation expenses. "In common fund cases such as this, [the Ninth
 15 Circuit has] established twenty-five percent (25%) of the common fund as the benchmark award for
 16 attorney fees." *Villegas v. J.P. Morgan Chase & Co.*, 2012 U.S. Dist. LEXIS 166704, at *18 (N.D.
 17 Cal. Nov. 20, 2012). Lead Counsel respectfully submits that the requested award is reasonable and
 18 should not weigh against preliminary approval. *See Ruch*, 2016 U.S. Dist. LEXIS 39629, at *35.

19 **C. The Settlement Does Not Unjustly Favor Any Settlement Class Members**

20 Under the third factor the Court examines whether the settlement grants preferential
 21 treatment to any Class Member. Here, Lead Counsel enlisted the help of a damages expert to
 22 prepare a Plan of Allocation that is designed to distribute a *pro rata* share of the Net Settlement
 23 Fund to Authorized Claimants based upon their claimed losses. Since the "[P]lan of [A]llocation
 24 submitted to the Court compensates class members in a manner generally proportionate to the harm
 25 they suffered on account of [the] alleged misconduct[.]" this factor supports approval. *Altamirano*,
 26 2015 U.S. Dist. LEXIS 97098, at *22. While Lead Plaintiff will receive a distribution from the Net
 27 Settlement Fund in accordance with the Plan of Allocation, he may also seek reimbursement of his
 28 expenses incurred as a result of the activities related to his representation of the Class, as authorized

1 by the PSLRA. “The Ninth Circuit has recognized that service awards to named plaintiffs in a class
 2 action are permissible and do not render a settlement unfair or unreasonable.” *Hendricks v. Starkist*
 3 *Co*, 2015 U.S. Dist. LEXIS 96390, at *17 (N.D. Cal. July 23, 2015).

4 **D. The Proposed Settlement Is Within the Range of Reasonableness**

5 “To evaluate the range of possible approval criterion, which focuses on substantive fairness
 6 and adequacy, courts primarily consider plaintiff’s expected recovery balanced against the value of
 7 the settlement offer.” *Zynga*, 2015 U.S. Dist. LEXIS 145728, at *39. Thus, the Court may preview
 8 the factors that ultimately inform final approval: (1) the strength of plaintiff’s case; (2) the risk,
 9 expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action
 10 status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery
 11 completed, and the stage of the proceedings; (6) the experience and views of counsel; (7) the
 12 presence of a governmental participant; and (8) the reaction of the class members to the proposed
 13 settlement. *See Ruch*, 2016 U.S. Dist. LEXIS 39629, *37.

14 Here, all of the factors support preliminary approval. If the Action were to continue, Lead
 15 Plaintiff would face numerous obstacles and risks. While Lead Plaintiff has always believed that
 16 his positions have merit, Defendants have raised numerous challenges and adamantly deny any
 17 wrongdoing. Defendants’ positions might prevail on summary judgment, or the court might deny
 18 class certification. If the Action were to survive those hurdles, the outcome of trial would be
 19 uncertain and might leave the Class with no recovery at all. As well, further litigation would
 20 involve considerable costs and a significant investment of time by the parties and their respective
 21 counsel and would burden the resources of the Court. In contrast to these risks and challenges, the
 22 Settlement provides an immediate and certain benefit to the Class.

23 In addition to providing the Class with a prompt recovery, Lead Plaintiff submits that the
 24 Settlement Amount is an excellent result, constituting a material percentage of the likely provable
 25 damages suffered by the Class. It is currently estimated that if Class Members submit claims for
 26 100% of the shares eligible for distribution, the average distribution per share of common stock will
 27 be approximately \$0.08 before deduction of Court-approved fees and expenses. If Lead Plaintiff
 28 were to prevail on each of the claims in the CAC at trial, the damages per share of common stock

would be approximately \$1.63. The Settlement Amount is 4.9% of the maximum damages Lead Plaintiff's expert estimated the Class sustained as a result of Defendants' alleged fraudulent activity. This is much higher than the median ratio of settlement amounts to investor losses for 2016 which NERA Economic Consulting determined was 2.1%. *See Gonnello Decl. Ex. 1 at 37, Svetlana Starykh and Stefan Boettrich, Recent Trends in Securities Class Action Litigation: 2016 Full-Year Review* (NERA 2017). As one court in this District recently noted, "[a]lthough the proposed settlement is only a small percentage of the total expected recovery at trial, there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery." *Rubio-Delgado v. Aerotek, Inc.*, 2015 U.S. Dist. LEXIS 75300, at *29 (N.D. Cal. June 10, 2015).

In regard to the other factors, as set forth more fully above, the Settlement was reached after more than two years of hard-fought litigation and is supported by experienced counsel. Finally, there is no governmental entity involved and notice has not been distributed to the Class, so these factors are not relevant. Thus, the Settlement is within the range of possible approval and warrants preliminary approval to permit Class Members to at least consider the terms of the Settlement.

II. The Class Should Be Certified For Settlement Purposes

Lead Plaintiff seeks approval the following Settlement Class: Lead Plaintiff and all persons who purchased or otherwise acquired Geron common stock during the period between December 10, 2012 and March 11, 2014, both dates inclusive, and who allege to have been damaged thereby. *See Stipulation ¶1.*

"Where, as here, the Parties reach a settlement agreement prior to class certification, a district court must first assess whether a class exists for settlement purposes." *Swain*, 2012 U.S. Dist. LEXIS 93215, at *3. In order to obtain class certification, a plaintiff must establish the requirements of Rule 23(a) and one of the three subsections of Rule 23(b). *See Zynga*, 2015 U.S. Dist. LEXIS 145728, at *24. "As in almost all lawsuits by shareholders of public companies, the investors in this case easily satisfy the requirements of Rule 23." *Magma*, 2007 U.S. Dist. LEXIS 62641, at *2.

A. The Proposed Settlement Class Meets the Requirements of Rule 23(a)

1. The Settlement Class Is Sufficiently Numerous

Under Rule 23(a) a class may be certified if it is “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “[C]ourts have held that numerosity may be presumed when the class comprises forty or more members.” *Krzesniak v. Cendant Corp.*, 2007 U.S. Dist. LEXIS 47518, at *18 (N.D. Cal. June 20, 2007).

During the Class Period, Geron common stock was traded on the NASDAQ exchange. *See* CAC ¶143. As of March 6, 2014, there were more than 156 million shares of Geron common stock outstanding, owned by thousands of people. *See* Geron Corporation, Annual Report (Form 10-K) (2014). Thus, the Class is sufficiently numerous because joinder would be impracticable. *See Booth v. Strategic Realty Trust Inc.*, 2015 U.S. Dist. LEXIS 84143, at *26 (N.D. Cal. June 28, 2015) (“[S]ecurities fraud cases fit Rule 23 like a glove.”).

2. There Are Common Questions of Law and Fact

Rule 23(a)(2) requires the existence of “questions of law or fact common to the class.” “Courts regularly hold that commonality is plainly satisfied in a securities case where the alleged misrepresentations in the prospectus relate to all the investors, because the existence and materiality of such misrepresentations obviously present important common issues.” *Booth*, 2015 U.S. Dist. LEXIS 84143, at *10.

In this case, the overarching issue shared by all members of the proposed settlement Class is whether Defendants violated the Exchange Act and the rules promulgated thereunder in connection with Lead Plaintiff’s factual allegations discussed above. *See* CAC ¶164. This issue involves common questions because each Class Member has to prove the same elements to establish Defendants’ liability and thus the low hurdle of Rule 23(a)(2) is satisfied. *See Zynga*, 2015 U.S. Dist. LEXIS 145728, at *26-27 (finding commonality when the questions common to the class were the elements of a securities fraud claim).

3. The Proposed Class Representative’s Claims are Typical

A class may be certified if the claims of the representative parties are typical of the claims of the class. Fed. R. Civ. P. 23(a)(3). “Under the rule’s permissive standards, representative claims

are typical if they are reasonably co-extensive with those of absent class members; they need not be substantially identical.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998).

Lead Plaintiff’s claims arise from the same events and alleged misconduct and are based on the same legal theories as those of the proposed settlement Class. Here, Lead Plaintiff claims that (a) Defendants violated §§ 10(b) and 20(a) of the Exchange Act by issuing false and misleading statements; (b) Lead Plaintiff and other settlement Class Members purchased Geron common stock at artificially inflated prices based on those false and misleading statements and were damaged thereby; and (c) by proving Lead Plaintiff’s own claims, Lead Plaintiff would prove the claims of the settlement Class Members. Thus, there is a sufficient nexus between Lead Plaintiff’s claims and the Class’s claims to satisfy Rule 23(a)(3).

4. The Proposed Class Representative Will Fairly and Adequately Protect the Interests of the Settlement Class

Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Hanlon*, 150 F.3d at 1020.

Lead Plaintiff’s interests in this case are directly aligned with those of the other members of the proposed Settlement Class. Lead Plaintiff claims that he suffered damages from the same alleged conduct as the other members of the Class, and through those claims seeks the same recovery from Defendants. Accordingly, Lead Plaintiff is a more than adequate representative of the Settlement Class.

Lead Plaintiff’s counsel is qualified, experienced, and able to conduct this litigation. Indeed, Lead Counsel, a national law firm, has successfully litigated numerous securities fraud and complex class action cases. *See* Gonnello Decl., Ex. 2. Lead Counsel has devoted significant effort to identifying and investigating the potential claims in this Action and fought vigorously to preserve those claims. *See* Fed. R. Civ. P. 23(g)(1)(A). Based on the foregoing, Lead Plaintiff is an adequate representative for the settlement Class and Lead Counsel satisfies Rule 23(g).

B. The Proposed Settlement Class Satisfies Rule 23(b)(3)

1. Common Questions of Law and Fact Predominate Over Questions Affecting Only Individual Members of the Class

“[T]he predominance requirement tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Zynga*, 2015 U.S. Dist. LEXIS 145728, at *29. Rule 23(b)(3) does not require plaintiffs “to prove that each element of their claim is susceptible to class-wide proof.” *Chao v. Aurora Loan Servs., LLC*, 2014 U.S. Dist. LEXIS 124575, at *16 (N.D. Cal. Sept. 5, 2014).

Here, the common questions of law and fact described above predominate over any individual questions. The same set of operative facts applies to each Class Member (*i.e.* each Class Member purchased or otherwise acquired Geron common stock during the settlement Class Period at prices alleged to be artificially inflated as a result of Defendants’ false and misleading statements and/or omissions and each Class Member was allegedly harmed when the undisclosed facts came to light). *See Zynga*, 2015 U.S. Dist. LEXIS 145728, at *29-30 (finding predominance satisfied when each class member purchased stock and suffered damages as a result).

2. A Class Action Is Superior to Other Methods of Adjudication

With respect to the superiority prong of Rule 23(b)(3), four factors should be considered: (i) the interest of class members in individually prosecuting separate actions; (ii) the extent of any litigation already commenced by class members; (iii) the desirability of concentrating the litigation in the particular forum; and (iv) the difficulties in management of a class action. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 616 (1997). Courts have recognized that “[c]lass actions are particularly well-suited in the context of securities litigation, wherein geographically dispersed shareholders with relatively small holdings would otherwise have difficulty in challenging wealthy corporate defendants.” *In re Verisign, Inc. Sec. Litig.*, 2005 U.S. Dist. LEXIS 10438, at *31-32 (N.D. Cal. Jan. 13, 2005).

All four factors are satisfied in this case. First, prosecution of this lawsuit on a class action basis will be more efficient than adjudication of the numerous individual shareholder claims because the shareholders are geographically dispersed and have relatively small claims. *See id.* at *33 (finding class action superior when “[m]illions of VeriSign shares were traded daily during the

1 Class Period, and over a billion shares were traded during the Class Period.”).

2 Second, Lead Plaintiff and Lead Counsel have already invested significant resources thus
3 far in preserving and prosecuting the claims asserted in the CAC. Any additional individual
4 litigation would simply be duplicative of Lead Plaintiff’s efforts. As well, certification is the
5 superior method to facilitate the resolution of the Class’s claims against Defendants because, absent
6 certification, Defendants would not be able to obtain a Class-wide release and thus would have little
7 incentive to enter into a settlement. Thus, Lead Plaintiff has satisfied the superiority requirement of
8 Rule 23(b)(3) and this Court should certify the proposed settlement Class.

9 **III. The Proposed Class Notice Should Be Approved**

10 Pursuant to the Fifth Amendment, due process for class action plaintiffs requires that
11 counsel provide “notice plus an opportunity to be heard and participate in the litigation[.]” *Epstein*
12 *v. MCA, Inc.*, 179 F.3d 641, 649 (9th Cir. 1999). In *Phillips Petroleum Co. v. Shutts*, the Supreme
13 Court held that due process is satisfied “where a fully descriptive notice is sent first-class mail to
14 each class member, with an explanation of the right to opt out[.]” 472 U.S. 797, 812 (1985).

15 As well, “[f]or any class certified under Rule 23(b)(3), class members must be afforded the
16 best notice practicable under the circumstances, which includes individual notice to all members
17 who can be identified through reasonable effort.” *Zynga*, 2015 U.S. Dist. LEXIS 145728, at *48.
18 Under this standard, the notice must state the following in plain language: (i) the nature of the
19 action; (ii) the definition of the class; (iii) the class claims, issues, or defenses; (iv) that a class
20 member may enter an appearance through an attorney; (v) that the court will exclude from the class
21 any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii)
22 the binding effect of a class judgment on members. *Id.* Rule 23(e) requires notice that describes
23 “the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate
24 and to come forward and be heard.” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 946
25 (9th Cir. 2015). Furthermore, the PSLRA requires that the notice contain (i) a statement of the
26 recovery; (ii) a statement of the potential outcome of the case; (iii) a statement of attorneys’ fees
27 and costs; (iv) identification of the lawyers; (v) reasons for settlement; (vi) other information the
28 court requires; and (vii) a cover page summarizing that information. *See* 15 U.S.C. § 78u-4(a)(7).

1 Here, the Settlement Notice, which along with the Proof of Claim form, will be sent by U.S.
2 mail to Class Members and will be available on the website
3 www.GeronCorporationSecuritiesLitigation.com, and the Publication Notice, which will be
4 published in *Investor's Business Daily* and posted by *PR Newswire*, have been carefully drafted to
5 notify the Class of the terms of the Settlement, the Class Members' rights in connection with the
6 Settlement, and the date of the Final Fairness Hearing in compliance with Rules 23(c)(2) and 23(e),
7 the PSLRA, and due process. Indeed, the content of the Settlement Notice includes (i) the case
8 caption; (ii) a description of the claims in the Action; (iii) a description of the settlement Class; (iv)
9 the names of counsel for the settlement Class; (v) the amount of attorneys' fees and expenses that
10 will be requested by Lead Counsel; (vi) the Final Fairness Hearing date; (vii) a description of the
11 settlement Class Members' opportunity to appear at the hearing; (viii) a statement of the deadline
12 for filing objections to and exclusions from the Settlement; (ix) the consequences of exclusion; (x)
13 the consequences of remaining in the settlement Class; and (xi) the manner in which to obtain more
14 information.

15 The parties have agreed to use the traditional methods for notifying the Class Members:
16 notification by mail and by publication by wire service, in a national newspaper focusing on
17 investors, and on a designated website. This manner of providing notice represents the best notice
18 practicable under the circumstances, and satisfies the requirements of Rule 23, the PSLRA, and due
19 process. *See, e.g., In re Portal Software, Inc. Sec. Litig.*, 2007 U.S. Dist. LEXIS 51794, at *18-19
20 (N.D. Cal. June 30, 2007) (dissemination of notice to all reasonably identifiable class members and
21 published summary notice approved as best practical). Furthermore, Epiq Systems, Inc. ("Epiq")
22 has been retained to administer notice of the Settlement. Epiq's estimated administration expenses
23 are \$250,000. These administration expenses will amount to only \$0.003 per share of common
24 stock, which is a very reasonable amount given the high quality Epiq's services. Accordingly, Lead
25 Plaintiff respectfully requests that the Court approve the Notices and the procedures for their
26 dissemination.

IV. The Proposed Schedule Of Events

No later than twenty days after entry of the Preliminary Approval Order (the “Notice Date”), the Claims Administrator will notify Class Members of the Settlement by mailing a copy of the Settlement Notice and Proof of Claim form, substantially similar to the form attached as Exhibits A-1 & A-2 to the Stipulation, and will post a copy of the Settlement Notice and Proof of Claim form on the website established for the Action. Then, not later than ten calendar days after mailing of the Settlement Notice, the Publication Notice shall be published once in a national edition of *Investor’s Business Daily* and posted on *PR Newswire*. In connection with preliminary approval of the Settlement, the Court must set notice and objection deadlines. The Settling Parties respectfully propose the following schedule:

Event	Time for Compliance
Deadline for mailing the Settlement Notice to Class Members and posting the Settlement Notice on website (“Notice Date”)	20 calendar days after entry of the Preliminary Approval Order
Deadline for publishing the Publication Notice	10 calendar days after the Notice Date
Filing proof of mailing and publication of Notices	40 calendar days before the Final Fairness Hearing
Filing of briefs in support of final approval of Settlement, Plan of Allocation, and Lead Counsel’s fee and expense request	40 calendar days before the Final Fairness Hearing
Response deadline for Objections and Exclusions	25 calendar days before the Final Fairness Hearing
Filing of reply memoranda in response to any objection	7 calendar days before the Final Fairness Hearing
Final Fairness Hearing	The week of June 5, 2017, or at the Court’s earliest convenience thereafter (at least 100 days after the Preliminary Approval Order)
Deadline for submitting Proofs of Claim	75 calendar days after the Notice Date

CONCLUSION

Lead Plaintiff respectfully requests that this Court (a) preliminarily approve the proposed Settlement and schedule a Final Fairness Hearing; (b) preliminarily certify the proposed settlement Class, appoint Lead Plaintiff as settlement Class Representative and the Faruqi Firm as settlement Class Counsel; and (c) approve the proposed forms of notice and the proposed notice plan.

Dated: March 2, 2017

FARUQI & FARUQI, LLP

By: /s/ Richard W. Gonnello

Richard W. Gonnello

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2017, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List.

By: /s/ Richard W. Gonnello
Richard W. Gonnello

Mailing Information for a Case 3:14-cv-01224-CRB In re: GERON CORPORATION SECURITIES LITIGATION

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)